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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------|
| 09/587,654  | 06/05/2000  | Scott C. Miller      | 2171                          | 8911             |
| 25280   | 7590        | 11/26/2003           |                               |                  |
| MILLIKEN & COMPANY<br>920 MILLIKEN RD<br>PO BOX 1926<br>SPARTANBURG, SC 29304 |             |                      |                               |                  |
|   |             |                      | EXAMINER<br>JUSKA, CHERYL ANN |                  |
|   |             |                      | ART UNIT<br>1771              | PAPER NUMBER     |

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/587,654             | MILLER ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Cheryl Juska           | 1771                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,4-9,11-22,24,25,27-33,35-37,42-46,48-52,54-56 and 58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-9,11-22,24,25,27-33,35-37,42-46,48-52,54-56 and 58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

### ***Response to Amendment***

2. The amendment filed September 15, 2003, has been entered. Claims 1, 20, and 45 have been amended as requested, while claims 3 and 47 have been cancelled. Thus, the pending claims are now 1, 4-9, 11-22, 24, 25, 27-33, 35-37, 42-46, 48-52, 54-56, and 58.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 4-9, 11, 19, 24, 25, 27-30, 33, 35, 37, 44-46, 48, 52, and 54 stand rejected under 35 USC 103(a) as being unpatentable over US 4,522,857 issued to Higgins in view of EP 048 968 issued to Porter et al. as set forth in section 4 of the last Office Action.

5. Claims 1, 4-11, 15-17, 19-31, 33-39, 44-46, 48-54, 56, and 58 stand rejected under 35 USC 103(a) as being unpatentable over US 5,540,968 issued to Higgins in view of Higgins '857

and in further view of EP 048 968 issued to Porter et al. as set forth in section 5 of the last Office Action.

6. Claims 12-14 and 18 stand rejected under 35 USC 103(a) as being unpatentable over Higgins '857 and Porter references as applied above, and in further view of EP 309 816 issued to Turner et al., as set forth in section 6 of the last Office Action.

7. Claims 12-14 and 18 stand rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '968, Higgins '857 and Porter references as applied above, and in further view of EP 309 816 issued to Turner et al., as set forth in section 7 of the last Office Action.

8. Claims 16, 17, and 20-22 stand rejected under 35 USC 103(a) as being unpatentable over Higgins '857 and Porter references as applied above, and in further view of Higgins '968, as set forth in section 8 of the last Office Action.

9. Claim 55 stands rejected under 35 USC 103(a) as being unpatentable over Higgins '857 and Porter references as applied above, and in further view of US 6,089,007 issued to Hamilton et al., as set forth in section 9 of the last Office Action.

10. Claim 55 stands rejected under 35 USC 103(a) as being unpatentable over the cited Higgins '968, Higgins '857 and Porter references as applied above, and in further view of US 6,089,007 issued to Hamilton, as set forth in section 10 of the last Office Action.

### ***Response to Arguments***

11. Applicant's arguments filed with said amendment have been fully considered but they are not persuasive.

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12. Applicant traverses the above rejections by arguing that a carpet tile constructed as claimed (i.e., with a low face weight and low cushion weight) would not have been expected to provide adequate performance characteristics. Applicant submits the Kilpatrick Declaration in support of said argument. Applicant also argues that one would not look to Porter to determine the face weight of the Higgins carpet tile, since Porter is not directed to carpet tiles.

Additionally, applicant asserts that the declaration is evidence of the accepted wisdom of the art.

13. In response, it is first argued there is nothing on record showing that suitable face weights for carpet tiles differ from face weights for conventional broadloom carpets. Thus, applicant's argument that one would not look to a conventional carpet (i.e., Porter reference) for a suitable carpet tile face weight (i.e., Higgins) is found unpersuasive.

14. Secondly, it is reiterated that said declaration is insufficient to overcome the standing prior art rejection. Said declaration merely presents an opinion rather than objective evidence. There is no factual evidence to support Kilpatrick's opinion that the accepted wisdom of the art was that "an undesirable level of crush would occur if both pile weight and cushion weight were substantially reduced." As such, the opinion does not outweigh the facts of the prior art. It is the examiner's opinion that with recent improvements in the resiliency of yarns employed as pile face yarns, one skilled in the art would recognize that lower face weights could be employed while still obtaining satisfactory crush results.

15. In support of the examiner's opinion, applicant is directed to US 6,332,253 issued to Rasnick, Jr. et al., which states, "In particular, there is a continuing trend within the industry toward producing carpets and other pile fabrics with lower face weights." (Col. 2, lines 19-22.) Although Rasnick is not specific as to the origin of said trend, one skilled in the art would

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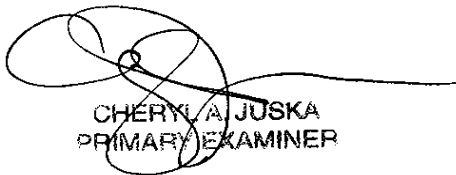
recognize that lower face weights would not be suitable unless one could still obtain satisfactory performance characteristics. Therefore, applicant's arguments are found unpersuasive and the above rejections stand.

***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER